

Preliminary Amendment

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Remarks

Claims 1 and 25 are herein amended. Support for these amendments is found in claim 25 as originally filed.

Claims 1-3, 5-12, 14-19 and 25-33 are pending in the application. No new matter has been added, and no new material presented that would necessitate an additional search on the part of the Examiner.

This amendment is filed with a Request for Continued Examination.

Issues under 35 U.S.C. §112 ¶2

The Advisory Action dated June 23, 2006 omits reference to issues under 35 U.S.C. §112 ¶2, and as Applicants' amendment has been entered, and as these issues were previously addressed by Applicants' amendment dated May 12, 2006, Applicants request additional information.

Claims are not obvious

The Advisory Action maintains rejection of claims 1-3, 5-12, 14-19, 26-30 and 32-33 under 35 U.S.C. §103(a) in view of Echerer et al. (U.S. Patent Number 5,740,267, issued April 14, 1998) in combination with Fenster et al. (U.S. Patent Number 5,454,371, issued October 3, 1995) and Killcommons et al. (U.S. Patent Number 6,424,996, issued July 23, 2002).

Prior to analyzing the art cited in the Advisory Action, Applicants believe that a brief description of the subject matter of independent claims 1 and 10 would be of use to the Examiner.

Claim 1 as here amended is directed to a method for providing and processing a censored user interaction with a spatially displayed medical image and producing graphics related data on

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the medical image. The method has steps of providing a menu-less graphical interface; displaying, essentially unobstructed, the medical image in a substantial portion of the graphical interface without the presence of menus, toolbars and control panels on the graphical interface; controlling a mouse computer interface device with at least one button; displaying a pointer symbol on the graphical interface, where the pointer symbol represents a current position of the mouse on the graphical interface; tracking the status of the button; detecting a position of the mouse, wherein the position detection step is activated upon actuation of the button; generating one of a plurality of different measurement graphics related to a predefined set of measurement operations on the medical image upon at least one actuation of the at least one button, wherein one of the measurement graphics is an angle value quantity; when the medical image is displayed on the graphical interface without the presence of menus, toolbars and control panels, enabling the generation of different measurement graphics based only upon actuation of the button of the mouse when the pointer symbol is situated on the medical image such that the measurement graphics are generated without movement of the pointer symbol outside of the medical image, and enabling the generation of the at least three measurement graphics without requiring a user to define in advance the type of measurement graphic being generated.

Claim 10 is directed to an apparatus arranged to provide and process a cursored user interaction with a spatially displayed medical image. The apparatus comprises a menu-less graphical interface arranged to display, essentially unobstructed, the medical image in a substantial portion of the graphical interface without the presence of menus, toolbars and control panels on the graphical interface; a pointing device with at least one button, where the pointing device is represented on the graphical interface by a standardized pointer symbol and where the

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pointer symbol represents a current position of the pointing device within the context of the graphical interface; a processor configured to detect an actuation of the button of the pointing device and track positions of the pointing device; and a processor-internal list of measurement operations, the measurement operations being performed upon at least one actuation of the button and producing at least three corresponding, different measurement graphics on the medical image, the processor being arranged to produce, when the medical image is displayed on the graphical interface without the presence of menus, toolbars and control panels, the at least three different measurement graphics based on the list of measurement operations only upon actuation of the at least one button of the pointing device when the pointer symbol is situated on the medical image such that the measurement graphics are produced without movement of the pointer symbol outside of the medical image.

Echerer et al., U.S. Patent Number 5,740,267, issued April 14, 1998

Echerer et al. shows an apparatus for acquiring a radiographic image, enhancing the image and extracting data from the image, and storing the enhancements and data so that relationships of objects in the image or other images can be determined. See Echerer et al., column 1, lines 17-21. Echerer shows storing a permanent image that cannot be modified, and making a copy for display on a monitor that is stored in random access memory and lost when the computer is turned off. Ibid, column 4, lines 10-15. The image is enhanced and marked with landmarks and lines of interest between landmarks, which are used for analysis of the relationship between the landmarks and lines of interest. Ibid, column 4, lines 16-21. The enhancements are stored separately from the unmodified image. Ibid, column 4, lines 21-22 and 26-29.

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Echerer et al. fails to teach or suggest a menu-less graphical interface, as is the subject matter of claims 1 and 10. Echerer et al. also fails to teach or suggest displaying, essentially unobstructed, a medical image in a substantial portion of a graphical interface without the presence of menus, toolbars and control panels, as is the subject matter of claims 1 and 10.

The passage of Echerer et al. quoted below, alleged by the Examiner to show “controlling mouse-computer interface device,” clearly shows that Echerer fails to teach or suggest a menu-less graphical interface:

When performing a Manual Analysis, there are a variety of options that usually require a request for information about the image from the CPU. For example, if the user wishes to measure a distance, two points, called “Landmarks,” are required from the image across whose span the distance between those Landpoints is calculated. By pressing the “Distance” button on the Manual Analysis menu, the CPU is instructed by the user to report the coordinates of the next two consecutive points, indicated in a preferred embodiment as “clicks” of a left mouse button. . . .

Y = The Y coordinate of the landmark. The distance is reported in a text box on the Analysis Menu and may be made into a label by pressing the Make Label button. [See Echerer et al., column 13, lines 25-57]

This passage further shows that Echerer et al. requires a user to define a type of measurement graphic being generated in advance, by requiring the user to choose “Distance” from a menu. In contrast, Applicants’ claim 1 is directed to enabling the generation of at least three measurement graphics without requiring a user to define in advance the type of measurement graphic being generated.

Most important, Echerer et al. is silent as to “displaying...said medical image...without the presence of menus, toolbars and control panels on said graphical interface,” and “enabling the generation of the at least three measurement graphics without requiring a user to define in

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advance the type of measurement being generated,” as admitted by the Office Action dated March 14, 2006 and the Advisory Action.

For any of these reasons, Echerer et al. alone clearly does not render any of pending claims 1 and 10, and other claims that depend directly or indirectly from these claims, obvious.

Applicants show below that none of the other cited references cures these defects of Echerer et al.

Fenster et al., U.S. Patent Number 5,454,371, issued October 3, 1995

Fenster et al. shows a method and system for converting two-dimensional images of a target volume represented by an array of pixels into a three-dimensional image represented by a volumetric image array. See Fenster et al., column 1, lines 55-60. Fenster shows transforming an array of pixels into an image array, extracting a slice of the image array and computing the position of each pixel in a volumetric image array, and mapping a grey-level or color value for the pixels of the slice into corresponding pixels of the volumetric image array. Ibid, column 1, lines 60-67 to column 2, lines 1-10. Fenster shows a system for displaying a 3-D image represented by a volume image array that has means to interpret desired manipulations, including rotation of the image or a visible surface around an axis and translation of a surface of the image along an axis. Ibid, column 2, lines 28-50.

Fenster et al. fails to teach or suggest displaying, essentially unobstructed, a medical image in a substantial portion of a graphical interface, as is the subject matter of claims 1 and 10. Further, Fenster et al., like Echerer et al., is silent to “enabling the generation of the at least three measurement graphics without requiring a user to define in advance the type of measurement

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graphic being generated," as admitted by the Office Action of March 14, 2006 and the Advisory Action. Therefore, Fenster et al. fails to cure the defects of Echerer et al.

As Fenster et al. clearly fails to cure the defects of Echerer et al. with respect to claims 1 and 10, therefore claims 1 and 10 are not obvious in view of Echerer et al. and Fenster et al., alone or in combination.

Killcommons et al., U.S. Patent Number 6,424,996, issued July 23, 2002

Killcommons et al. shows an integrated e-mail and server system for manipulating and communicating medical information. See Killcommons et al., column 1, lines 16-19. The server is adapted to store multimedia medical data and includes a data interface for acquiring, storing, and viewing the medical data. Ibid, column 3, lines 59-64. Killcommons shows a medical information transfer unit including a display for viewing a medical file, and a browser for communicating with a server, with a plurality of medical files containing multimedia medical data stored in the server. The browser includes an enhancement module that allows for requesting, decompressing, and transferring medical files. Ibid, column 4, lines 31-46.

Killcommons et al. fails to teach or suggest a menu-less graphical interface, as is the subject matter of claims 1 and 10. Further, Killcommons et al. fails to teach or suggest displaying, essentially unobstructed, a medical image in a substantial portion of a graphical interface, as is the subject matter of claims 1 and 10. Therefore, Killcommons et al. clearly fails to cure the defects of Echerer et al. and Fenster et al.

As Killcommons et al. fails to cure the defects of Echerer et al. and Fenster et al. with respect to claims 1 and 10, therefore claims 1 and 10 are not obvious in view of Echerer et al., Fenster et al. and Killcommons et al., alone or in combination.

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Claims 2-3, 5-9, 11-12, 14-19, 26-30 and 32-33 depend directly or indirectly from claims 1 and 10 and therefore incorporate all of the subject matter of these claims. As Killcommons et al. and Fenster et al. fail to cure the defects of Echerer et al. with respect to claims 1 and 10, therefore claims 1-3, 5-12, 14-19, 26-30 and 32-33 are not obvious in view of Echerer et al., Fenster et al. and Killcommons et al., alone or in combination. Applicants respectfully request that this rejection be withdrawn.

The Advisory Action maintains rejection of claims 25 and 31 under 35 U.S.C. §103(a) in view of Echerer et al. (U.S. Patent Number 5,740,267, issued April 14, 1998) in combination with Fenster et al. (U.S. Patent Number 5,454,371, issued October 3, 1995), Killcommons et al. (U.S. Patent Number 6,424,996, issued July 23, 2002) and Buxton et al. (U.S. Patent Number 5,798,752, issued August 25, 1998). Echerer et al., Fenster et al., and Killcommons et al. are characterized above.

Claim 25 as amended is directed to a method as claimed in Claim 1, where the angle value quantity is assigned to a middle point of a continuous triple-point actuating/positioning.

Claim 31 is directed to an apparatus as claimed in Claim 10, including assigning means for assigning an angle value quantity to a middle point of a continuous triple-point actuating/positioning.

Buxton et al., U.S. Patent Number 5,798,752, issued August 25, 1998

Buxton et al. shows processor-controlled machines such as computers, and user interfaces for allowing a user to interact with the machine. See Buxton et al., column 1, lines 30-33. Buxton shows a machine for executing a program that operates on a set of underlying data, and displays a visual representation of the data. Ibid, column 4, lines 44-46.

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Buxton et al. fails to teach or suggest a menu-less graphical interface, as is the subject matter of claims 1 and 10. Buxton et al. also fails to teach or suggest displaying a medical image on the graphical interface without the presence of menus, toolbars and control panels, as is the subject matter of claims 1 and 10.

Most important, Buxton et al. clearly shows the use of menus in a graphical interface, as shown by the passage below:

The system further provides a visual depiction of a set of controllers, such as tool palettes, property palettes, menus, switches, dialog boxes, and sliders. The controllers are collectively referred to as tools, and in some embodiments include transparent click-through tools that are placed over objects on which they are to operate. [See Buxton et al., column 4, lines 47-56, emphases added]

As this passage clearly shows tools (such as menus) that are placed over objects, Buxton et al. fails to teach or suggest displaying, essentially unobstructed, a medical image in a substantial portion of a graphical interface, as is the subject matter of claims 1 and 10.

Further, Buxton et al. fails to even mention medical images, let alone teach or suggest displaying medical images in a graphical interface.

Claims 25 and 31 depend directly from claims 1 and 10 and therefore incorporate all of the subject matter of these claims. As Buxton et al. clearly fails to cure the defects of Echerer et al., Fenster et al. and Killcommons et al. with respect to claims 1 and 10, therefore claims 1 and 10 are not obvious in view of Echerer et al., Fenster et al., Killcommons et al., and Buxton et al., alone or in any combination. Therefore, claims 25 and 31, which include all of the subject matter of claim 1, also are not obvious in view of this combination of references.

For any of these reasons, Applicants assert that the present claims are not obvious, and respectfully request that rejection of claims 25 and 31 under 35 U.S.C. §103(a) be withdrawn.

Legal analysis

Whether an invention would have been obvious under 35 U.S.C. §103(a) is a legal conclusion based on underlying findings of fact. *In re Kotzab*, 217 F.3d 1365, 1369 (Fed. Cir. 2000).

The *Manual of Patent Examining Procedure* states: "[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure." [emphases added] *Manual of Patent Examining Procedure* §2142 (8th Ed. Rev.2, May 2, 2004); *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Applicants respectfully traverse the rejection, and show that the facts of the case and the relevant case law indicate that the invention would not have been obvious to one of ordinary skill in the art, at the time the application was filed, for the following reasons.

To establish a *prima facie* case for obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. *Manual of Patent Examining Procedure*, §2143.03, p. 108 (8th Ed. Rev.2, May 2, 2004); *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). We show above that none of the references alone or in any combination teach or suggest all of elements of Applicants' claims.

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Lack of motivation to combine cited references

To establish obviousness based on a combination of the elements disclosed in the prior art in the absence of any hindsight, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant. *Id.* The teaching or suggestion, not merely to make the claimed combination, but also of a reasonable expectation of success, must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488; 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPDQ 1430 (Fed. Cir. 1990).

Applicants show below that none of the prior art references, taken as a whole at the time the application was filed, would have explicitly motivated or suggested combining these references, let alone having motivated the invention of the claims, let alone providing an expectation of success.

None of Echerer, Buxton and Killcommons, the more recent of the primary references, cite Fenster, the earliest reference, and all of these references fail even to cite any of the others. Under the legal criteria discussed above, Echerer, Buxton and Killcommons fail to provide any motivation for making any combination with Fenster et al., let alone suggest that such a combination would have been successful. As there is no citation in any of Echerer, Buxton or Killcommons to Fenster, there can be no teaching or suggestion to combine these references. For these reasons also, the combination of these references fails to teach or suggest the present claims.

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As none of Fenster, Echerer, Buxton, or Killcommons provide any explicit nor implicit motivation to one of ordinary skill in the art to have combined any elements of these primary references to have arrived at the present claims of Applicant's invention, then making the combination is using Applicant's own specification as a blueprint to reconstruct the invention, which is impermissible hindsight, viz., extracting merely an element or word from each reference, to attempt to reconstruct Applicant's claims when none of the references explicitly or implicitly teaches or suggests such a combination, let alone teaches or suggests a reasonable expectation of success.

Even had one of ordinary skill in the art, reading the cited references, been motivated at the time the present application was filed to combine these references, there was no suggestion that this combination would have been successful. The facts show that there is no explicit suggestion from the prior art to combine the cited references even to try the claimed method and apparatus, and no explicit suggestion of a reasonable expectation of success had the combination been made. As none of the cited references provides any explicit motivation to one of ordinary skill in the art to have combined any elements of these primary references to arrive at Applicants' present claims, for at least this reason also no *prima facie* case for obviousness of the claims has been established. Rather, making the combination is using Applicants' own specification as a blueprint to reconstruct the invention, which is impermissible hindsight.

The knowledge generally available to one of ordinary skill in the art would not have rendered the claims of the present invention obvious

As a preliminary matter, Applicants acknowledge that in certain cases, courts describe motivation to combine references in the knowledge of one of ordinary skill in the art, however these cases limited such motivation to well-described factual circumstances. A series of

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decisions described below explain when the knowledge of one of ordinary skill in the art provides sufficient motivation to combine references for an obviousness rejection, and define the metes and bounds of when the knowledge of one of ordinary skill in the art sufficiently provides the motivation to combine references. Thus, a court points out, "[a] statement that modifications of the prior art would have been within the ordinary skill of the art at the time the claimed invention was made, because the references relied upon teach that all aspects of the claimed invention were individually known in the art, is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references."

[emphases added] *Ex parte Levingood*, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). See also *In re Kotzab*, 217 F.3d 1365, 1371; 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000).

Courts generally agree that whether an Examiner relies on an express or an implicit showing, particular findings related thereto must be provided. [emphasis added] See *In re Kotzab*, 217 F.3d at 1370. Broad conclusory statements standing alone are not "evidence" Id. A legal determination of obviousness is based on facts underlying the claims, and failure to reference or analyze these facts, or to address the underlying relevant case law, is merely conclusory.

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so, found either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art. The legal criteria to determine the extent to which such knowledge is in the general art, rather than in a specification, has been extensively addressed by recent court decisions analyzed below.

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In *In re Kotzab*, claims were directed to an injection molding method for forming plastic articles involving the use of a single sensor to control a plurality of flow control valves. *In re Kotzab* 217 F.3d at 1367. The Examiner rejected the claims because the primary reference taught that one system constructed and operated according to the invention may be used to control a number of valves. [emphasis added] Id.

The court disagreed, stating that there was not substantial evidence to show that "one system" is the same as "one sensor". The court explained that the Examiner and the Board of Patent Appeals and Interferences fell into the hindsight trap because a single sensor as opposed to multiple sensors is a technologically simple concept. [emphasis added] Id. at 1371. The court concluded however, that "there was no finding as to the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of Kotzab's invention to make the combination in the manner claimed." [emphases added] Id.

Similarly, the court disagreed with the reasoning of the Examiner in the case *In re Fine* 837 F.2d 1071, 1072-1073 (Fed. Cir. 1988) in which claims had been rejected as obvious. The court pointed out that neither the Examiner nor the Board of Patent Appeals and Interferences offered any support or explanation for the conclusion that the substitution of one type of detector for another would have been within the skill of the art. Id. at 1074; emphasis added. The court explained that neither reference, alone or in combination, suggested the claimed invention, and the Board erred in affirming the Examiner's conclusion that it would have been obvious to substitute an element in one cited reference for a different element in the other cited reference. Id. at 1075. The court further explained that whether a particular combination might be "obvious to try" is not a legitimate test of patentability. Id.

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The claims in *In re Jones* directed to a salt were rejected as obvious, the Examiner pointing out that known forms of the salt in a cited reference had similar utility and one of ordinary skill in the art would appreciate that the salt group has significance with respect to imparting activity to such compounds. *In re Jones*, 958 F.2d 347, 348-351 (Fed Cir. 1992). The Solicitor contended that one skilled in the art would have been motivated to expect the salt to have herbicidal activity. Id.

The court disagreed, stating there must be some suggestion or teaching to combine the disclosures of two or more prior art references in order to establish *prima facie* obviousness. Id. The suggestion or teaching must be found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. Id. The court further determined that there was no such suggestion in one of the cited references. Id. The court stated that conspicuously missing from the record was any evidence, other than the speculation that one of ordinary skill in the herbicidal art would have been motivated to make the modifications necessary to arrive at the claimed salt. Id.

Two recent cases deal with the metes and bounds of application of the knowledge of one of ordinary skill in the art as a proper motivation for combining references, and are described herein because the facts of these cases can be distinguished from the facts of the present application, as shown in Applicants' previous response, and further analyzed below.

In *Ruiz v. A.B. Chance Company*, 357 F.3d 1270; 69 U.S.P.Q.2d 1686 (Fed. Cir. 2004), the two prior art references both addressed precisely the same problem: the use of screw anchors to underpin existing structural foundations. The court explained that proper motivation to combine two references was found in the nature of the problem to be solved because the two

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cited references in this case addressed precisely the same problem of underpinning existing structural foundations. [emphases added] Id. at 1276. The court further stated that because the prior art references address the narrow mechanical problem of underpinning existing building foundations, a person seeking to solve that exact same problem would consult the references and apply their teachings together. [emphasis added] Id.

Ruiz provides a very narrow scenario for when the nature of the problem can provide the implicit motivation to combine references, requiring the prior art references cited to address precisely the same problem. In contradistinction to *Ruiz*, in the present application not even one of the prior art references addresses precisely the same problem. Further, none of these references teach or suggest how to combine any of the other references to arrive at the subject matter of the claims as here amended. Therefore, the narrow holding of *Ruiz* is inapposite to the present case.

A second recent case, *National Steel Car, Ltd. v. Canadian Pacific Railway, Ltd.* 357 F.3d 1319, 69 U.S.P.Q.2d 1641 (Fed. Cir. 2004), also addresses the issue of when motivation to combine references can be considered proper. In *National Steel Car*, the claims at issue were directed to a railcar with a "drop deck". Id. at 1322. In *National Steel Car*, the court determined that the motivation to combine the two prior art references was implicit in the knowledge of one of ordinary skill in the art in that case, because both of the references independently arrived at the "drop deck" railcar design. [emphasis added] See Id. at 1337-1340. Since two different inventors in the field independently arrived at the claimed invention, the court decided that the motivation to combine the two cited prior art references was implicit in the knowledge of one of ordinary skill in the art. See Id.

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The facts of that case are readily distinguishable from the facts of the present application.

Unlike in *National Steel Car*, in the present claims none of the references teaches or suggests all of the elements of Applicants' claimed subject matter. Additionally, none of the prior art references suggests the combination of the references cited by the Office Action. Finally, the combination of all of the cited references fails to teach or suggest every element of independent claims 1 and 10.

In the present case, Echerer et al. shows an apparatus for acquiring a radiographic image, enhancing the image and extracting data from the image, and storing the enhancements and data so that relationships of objects in the image or other images can be determined. See Echerer et al., column 1, lines 17-21. Echerer et al. however fails to teach or suggest a menu-less graphical interface, or displaying, essentially unobstructed, a medical image in a substantial portion of a graphical interface.

Fenster et al. shows a method and system for converting two-dimensional images of a target volume represented by an array of pixels into a three-dimensional image represented by a volumetric image array. See Fenster et al., column 1, lines 55-60.

Killcommons et al. shows an integrated e-mail and server system for manipulating and communicating medical information. See Killcommons et al., column 1, lines 16-19. The server is adapted to store multimedia medical data and includes a data interface for acquiring, storing, and viewing the medical data. Ibid., column 3, lines 59-64.

Buxton et al. shows processor-controlled machines such as computers, and user interfaces for allowing a user to interact with the machine. See Buxton et al., column 1, lines 30-33.

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These references neither teach nor suggest how to modify any of the technology of any of the other cited references, to combine with the other references, let alone teach or suggest the subject matter of the claims of the present application. Therefore, clearly, the narrow holdings of *Ruiz* and *National Steel Car* are inapposite to the present claims.

Thus, analysis of the facts of the present claims and the facts of the cited prior art, *viz.*, lack of teachings by others of all of the subject matter of the claims as here amended, clearly distinguish the present case from both *Ruiz* and *National Steel Car*, and demonstrate that the motivation to combine the references cited by the Office Action was not in the knowledge generally available to one of ordinary skill in the art. Rather, the present specification and claims have been used as a blueprint to pick and choose references to reconstruct the invention, which is impermissible hindsight.

These arguments made in Applicants' previous response were not addressed in the Advisory Action, and therefore are further here analyzed with respect to the present claims as here amended.

For any of the above reasons, Applicants assert that claims 1-3, 5-12, 14-19, 25-30 and 31-33 are not obvious, and respectfully request that the rejection be withdrawn.

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Summary

On the basis of the foregoing reasons, Applicants respectfully submit that the pending claims are in condition for allowance, which is respectfully requested.

If there are any questions regarding these remarks, the Examiners are invited and encouraged to contact Applicant's representative at the telephone number provided.

Respectfully submitted,



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